

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 17, 2009 Session

DEMITRA GEORGE HUNSINGER
v.
TONY MICHAEL HUNSINGER

Appeal from the Chancery Court for Rutherford County
No. 07-0040DR Royce Taylor, Judge

No. M2008-02434-COA-R3-CV - Filed December 21, 2009

This is a divorce case. The husband and the wife were married for twenty-two years and had four children together, three of whom were minors at the time of trial. The husband worked in real estate, and the wife was as a homemaker, caring for the parties' children. After discovering that the husband was pursuing other relationships on the internet, the wife filed for divorce. After trial, the trial court entered a permanent parenting plan designating the husband as the primary residential parent for the oldest minor child and designating the wife as the primary residential parent for the two youngest children. The trial court also divided the marital estate, allocating the entirety of a substantial tax debt to the husband. Finally, the trial court awarded nominal alimony *in futuro* to the wife, finding that she needed it but the husband could not pay for it as of the time of trial. The husband now appeals, challenging the parenting plan, the division of the marital estate, and the award of alimony. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and J. STEVEN STAFFORD, J., joined.

Andrew M. Cate, Nashville, Tennessee for the Defendant/Appellant Tony Michael Hunsinger

Laurie Y. Young, Murfreesboro, Tennessee for the Plaintiff/Appellee Demitra George Hunsinger

OPINION

FACTS AND PROCEEDINGS BELOW

Plaintiff/Appellee Demitra George Hunsinger (“Wife”) and Defendant/Appellant Tony Michael Hunsinger (“Husband”)¹ married at the ages 18 and 19, respectively, on August 18, 1985. They have four children together. At the time of trial, the oldest child, Stephanie, had reached the age of majority, and the three minor children, Alexandra, Matthew, and Savannah, were ages 16, 11, and 7, respectively.

Both Husband and Wife graduated from high school. Two months after the parties married, Husband enlisted in the United States Air Force. While serving in the military, Husband took some college courses, but never received a degree. Husband’s nearly nine year military career required the parties to reside in Texas, Arkansas and finally Montana. After leaving military service, Husband initially earned income by managing rental property that the parties owned in Montana, including an apartment complex that his mother helped them purchase.² Husband later acquired a real estate license and earned income during the marriage by buying, renovating and then selling properties, sometimes referred to as “flipping.”

After Wife graduated from high school, she took some college courses but did not complete the requirements for a degree. In the beginning, Wife worked as a bank teller. When Wife became pregnant with their first child, Wife stopped working outside the home. For the remainder of the marriage, Wife worked as a homemaker, caring for the parties’ children.

For about thirteen years, the family lived in Montana. They then decided to move to Tennessee, apparently to be closer to family. Shortly after the move, the parties sold the apartment complex in Montana, resulting in proceeds of some \$310,000. Because the proceeds of the sale were not reinvested in new property to minimize the tax consequences, the sale resulted in a \$211,135 tax liability³ to Husband and Wife. Rather than paying off the tax liability, the proceeds were spent on the family’s everyday living expenses, travel expenses, and a car.

¹ Husband’s attorney in this appeal did not represent him in the trial court below.

² Husband’s mother loaned money to the parties for the purpose of purchasing other properties as well. After Wife filed the petition for divorce, Husband’s mother filed a third party complaint to protect her interest in some property that was included in the marital estate. The trial court ultimately awarded Husband’s mother a judgment on one parcel, subject to awarding the property to Husband in the division of the marital estate. This is not an issue on appeal.

³ At the time of trial, the parties owed \$168,925 in penalty and interest to the federal government and \$42,210 in penalty and interest to the state of Montana. In the final order, the trial court estimated that the federal tax liability was \$250,000 and did not estimate the Montana state tax liability.

After the family moved to Tennessee, the parties' relationship deteriorated; at times they went months without speaking to each other. At some point, Wife discovered that Husband had been pursuing an alternative lifestyle on the internet. She then decided to file for divorce.

On January 10, 2007, Wife filed a petition for divorce. She sought to be designated as the primary residential parent for all three of the parties' minor children, as well as an award of spousal support. Husband counterclaimed for divorce, and also sought to be named as the children's primary residential parent.

The trial court⁴ appointed a special master,⁵ who conducted a *pendente lite* hearing. He recommended that, during the pendency of the case, Husband be designated the primary residential parent for the oldest minor child, Alexandra, and Wife be designated the primary residential parent for the parties' two youngest minor children, Matthew and Savannah. The trial court adopted the special master's recommendation.

Difficulties erupted while the case was pending. Both parties filed petitions for contempt; Wife sought an order of protection; and ultimately, the trial court entered an agreed injunctive order limiting the contact between the parties.

The trial was held on December 18, 2007. The trial court heard testimony from, among others, Husband, Wife, three of the parties' children, and the psychotherapist who had counseled the three minor children. Seventeen exhibits were entered into evidence, primarily on the parties' finances, including tax returns, investment account statements, and credit card billing statements.

Husband testified that he had played a large role in the children's lives. Prior to the initiation of the divorce proceedings, he said, he had breakfast with them every morning, coached some of their sports teams, and attended parent teacher conferences. Husband said that he had earned reasonable income in the real estate industry for a number of years, but the market had come to a standstill in the last year, hampering his ability to earn income. Husband explained that, when the parties sold the Montana apartment complex and failed to reinvest the proceeds, he understood that this would create a huge tax liability for the parties. He said that he assumed that his real estate practice in Tennessee would "take off," but it did not. During 2007, Husband said that he had had several real estate sales but had little income. For several months he had not paid child support or payments on the marital home, in which Wife and the youngest two children were living. Husband was living rent-free in a home owned by his mother and paying his bills with funds from his mother.

⁴ In an order entered January 30, 2007, Judge J. Mark Rodgers recused himself and Judge Royce Taylor was assigned to the case.

⁵ The Special Master was John A.W. Bratcher, Clerk and Master for the Chancery Court of Rutherford County.

Husband claimed that he had applied for numerous jobs, to no avail.⁶ He asserted that Wife's claims that he went into violent rages were baseless, as were the domestic violence charges against him.

Wife testified that she had not worked outside the home for the vast majority of the parties' twenty-two year marriage, and that during the marriage she had deferred to Husband to handle all of their finances. After filing the petition for divorce, she took a job for \$8 per hour. At the time of the trial, to make ends meet, Wife was working three jobs, one with her sister's business, another cleaning homes, and a third doing commercial cleaning. In her testimony, Wife said that Husband was a good father but had anger issues, as evidenced by his use of excessive force to discipline the parties' children.

The trial court heard testimony from 16-year-old Alexandra, who testified that she was aware that her father had been exploring alternative lifestyles on the internet but nevertheless blamed her mother for filing for divorce after promising that she would not. She also noted that her mother would not pay for items for her, such as a class ring, but her father would. Alexandra felt uncomfortable with Wife and preferred to continue living with Husband.

The parties' son, sixth-grader Matthew, testified that he missed Husband and wanted to spend more time with him. He corroborated Husband's testimony that he had coached Matthew in various sports. Matthew said that he wanted to spend half of his time with Husband and the other half with Mother, instead of only spending five days per month with Husband. Matthew denied being afraid of Husband and said that Husband's discipline was not excessive.

The trial court also heard testimony from Katherine Taylor ("Taylor"), a licensed psychotherapist who counseled the parties' children once a week for approximately nine months during the pendency of the divorce. Taylor testified that the "optimal situation" for Alexandra was to continue living with Husband because Alexandra felt closer to Husband than to Wife. Taylor said that it would be in Matthew's best interest to spend "a bit more time" with Husband because Matthew really enjoyed time with Husband; however, Taylor also reiterated that Matthew still needed time with Wife. Taylor did not have a strong opinion about the best residential arrangement for the parties' youngest child, Savannah.

At the conclusion of the hearing, the trial court took the case under advisement. On January 8, 2008, the trial court issued an oral ruling, which was put into a written order entered February 22, 2008. In the order, the trial court granted Wife a divorce on the grounds of inappropriate marital conduct. The trial court continued the parenting plan that was in place, with Alexandra residing with

⁶ Husband said that he applied at a medical center for a phlebotomist position, at Delta Airlines for a ramp agent position, at Dish Network, at Macaroni Grill, at Kohl's, and at Pillsbury. He blamed his inability to get a job on either the fact that he was caring for the parties' 16-year-old daughter or the charges of domestic violence against him. Husband was asked about finding work managing an apartment complex or doing maintenance or bartending, and he indicated that he could not take a position such as that because it required training and/or a license. When asked why he could not apply for a license, Husband said he did not have the money for the training and was not "willing" to ask his mother for money for that.

Husband and the two youngest children residing with Wife. Finding that Husband was responsible for the parties' "financial morass," the trial court awarded the marital residence to Wife and allocated the bulk of the parties' debt to Husband, including the entirety of the tax liability from the sale of the Montana apartment complex.⁷ Finally, the trial court awarded Wife alimony *in futuro* of one dollar per month, commenting: "She's entitled to alimony, should have received alimony, he just has no ability to pay alimony at this time and I'm not sure he ever will, but if he does, we'll keep that where it can be reviewed."

On March 24, 2008, Husband filed a motion to alter or amend the trial court's order to address certain matters that were not included in the final order. In an order entered September 30, 2008, the trial court granted Husband's motion and clarified the final order. Husband now appeals.

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Husband raises the following issues for review:

1. Did the trial court err by failing to consider the relevant statutory factors and by failing to enter a permanent parenting plan that is in the best interest of the parties' minor children?
2. Does the evidence preponderate against the finding of the trial court with regard to the determination of the equitable property division?
3. Did the trial court err in awarding Wife alimony *in futuro*?

⁷ The trial court's order stated in part:

[T]he Husband is responsible for the parties' financial debt with the Internal Revenue Service in the approximate amount of two hundred fifty thousand dollars and no/100 (\$250,000.00). The exact amount is unknown at the time of this matter being heard. That Husband shall hold Wife harmless from this debt and he shall be solely liable for said debt in whatever the final amount may be including penalties and interest assessed by the Internal Revenue Service.

....

... Wife shall be responsible for the credit card debt associated with Sears and Fifth Third Bank that is currently in Husband's name only. . . .

... Husband shall be solely responsible for the tax debt owed to the State of Montana and shall hold Wife harmless therefrom. . . .

... Husband is awarded the remainder of the real property. . . .

....

... The Mutual of Omaha and the Waddell Reed accounts shall be equally divided between the parties. . . .

... Husband shall receive the balloon note on the property previously sold in Montana in the approximate amount of fifty five thousand dollars and no/100 (\$55,000)

Since this case was tried by the trial court sitting without a jury, we review the trial court's factual findings *de novo* accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. **Phillips v. Ky-Tenn Oil, Inc.**, No. E2008-02724-COA-R3-CV, 2009 WL 3064883, at *3 (Tenn. Ct. App. Sept. 25, 2009) (citing TENN. R. APP. P. 13(d); **Boarman v. Jaynes**, 109 S.W.3d 286, 289-90 (Tenn. 2003)). The trial court's legal conclusions are reviewed *de novo* with no presumption of correctness. *Id.* (citing **Campbell v. Fla. Steel Corp.**, 919 S.W.2d 26, 35 (Tenn. 1996); **Presley v. Bennett**, 860 S.W.2d 857, 859 (Tenn. 1993)).

In matters concerning parents' residential time, trial courts are granted broad discretion. **Floyd v. Floyd**, No. M2007-02420-COA-R3-CV, 2008 WL 5424014, at *9 (Tenn. Ct. App. Dec. 30, 2008) (citing **Eldridge v. Eldridge**, 42 S.W.3d 82, 85 (Tenn. 2001)). As such, the trial court's decisions on those matters are reviewed under an abuse of discretion standard. *See Eldridge*, 42 S.W.3d at 85. Similarly, "[t]he trial court has substantial discretion when dividing the marital property, and its distribution will be given 'great weight' on appeal." **McDaniel v. McDaniel**, No. W2007-01587-COA-R3-CV, 2008 WL 5263605, at *6 (Tenn. Ct. App. Dec. 18, 2008) (citing **Ford v. Ford**, 952 S.W.2d 824, 825 (Tenn. Ct. App. 1996)). An award of alimony is subject to an abuse of discretion standard as well. **Goodman v. Goodman**, No. M2004-02781-COA-R3-CV, 2006 WL 47359, at *3 (Tenn. Ct. App. Jan. 9, 2006) (citing **Herrera v. Herrera**, 944 S.W.2d 379, 385 (Tenn. Ct. App. 1996)).

ANALYSIS

Husband first argues that the trial court erred in not designating him as the primary residential parent for all three of the minor children, and in not adopting his proposed parenting plan. He claims that the trial court failed to consider the relevant statutory factors in Tennessee Code Annotated § 36-6-404(b),⁸ pointing to the fact that the trial court's order setting forth the permanent parenting

⁸ The statute provides as follows:

(b) . . . [T]he court shall consider the following factors:

- (1) The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society that the child faces as an adult;
- (2) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;
- (3) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;
- (4) Willful refusal to attend a court-ordered parent education seminar may be considered by the court as evidence of that parent's lack of good faith in these proceedings;
- (5) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
- (6) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(continued...)

plan does not list findings of fact as to each statutory factor. Analyzing the facts of the case as related to the statutory factors, Husband argues that the permanent parenting plan adopted by the trial court is not in the children's best interest.

While section 36-6-404(b) directs the trial court to consider the statutory factors, the trial court is not required under the statute to explicitly set forth its application of each statutory factor to the facts of the case. *Eastman v. Eastman*, M2006-01134-COA-R3-CV, 2007 WL 1227042, at *2 (Tenn. Ct. App. Apr. 25, 2007) (citing *Darvarmanesh v. Gharacholou*, No. M2004-00262-COA-R3-CV, 2005 WL 1684050, at *4 (Tenn. Ct. App. July 19, 2005)).

On appeal, we have carefully reviewed the appellate record in light of the statutory factors to be considered in making parenting decisions. It is clear from the testimony that both Husband and Wife have been involved in raising the children, and that Husband has been a caring father. We are mindful of Matthew's testimony and of the recommendation of the counselor, both supportive of an allocation of more parenting time to Husband. However, we may not disturb a trial court's decision on residential parenting issues merely because we would have ordered otherwise had we been in the trial court's position. *Eldridge*, 42 S.W.3d at 88 ("Reversal should not result simply because the appellate court found a 'better' resolution.") Upon review, we must conclude that the parenting plan adopted by the trial court falls within the range of acceptable alternatives and thus is not an abuse of discretion. *See Audiffred v. Wertz*, No. M2009-00415-COA-R3-CV, 2009 WL 4573417, at *1 (Tenn. Ct. App. Dec. 4, 2009) (citing *Bronson v. Umphries*, 138 S.W.3d 844, 851 (Tenn. Ct. App. 2003)).

⁸ (...continued)

- (7) The love, affection, and emotional ties existing between each parent and the child;
- (8) The emotional needs and developmental level of the child;
- (9) The character and physical and emotional fitness of each parent as it relates to each parent's ability to parent or the welfare of the child;
- (10) The child's interaction and interrelationships with siblings and with significant adults, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;
- (11) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
- (12) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;
- (13) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;
- (14) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;
- (15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and
- (16) Any other factors deemed relevant by the court.

T. C. A. § 36-6-404(b) (2005).

Husband next argues that the trial court erred in its division of the marital estate. In particular, Husband points to the fact that the net result of the division of property left him with \$194,438.50 in debt and awarded Wife \$107,957.50 in assets. Husband insists that “[s]uch a division cannot be considered equitable from any perspective.”

When dividing the marital estate, the trial court is required to divide equitably without regard to fault. *Crumbley v. Crumbley*, No. M1998-00158-COA-R3-CV, 1999 WL 1015565, at *3 (Tenn. Ct. App. Nov. 10, 1999) (citing T.C.A. § 36-4-121(a)). In doing so, it is to consider the relevant factors set forth in Tennessee Code Annotated § 36-4-121(c).⁹ The trial court is given broad discretion in dividing the marital estate, and its decision will be given “great weight” on appeal. *McDaniel*, 2008 WL 5263605, at *6 (citing *Ford*, 952 S.W.2d at 825).

The disparity in the division of the marital estate emphasized by Husband on appeal arises primarily from the allocation of the parties’ substantial tax debt to him. After listening to the parties’ testimony, the trial court found that Husband was primarily responsible for creating this large debt. The evidence in the record on this point is ample and largely undisputed. Wife testified that, during the marriage she focused on being a homemaker and deferred to Husband on the parties’ finances. Husband testified that he was aware that the parties could minimize the tax liability from selling the Montana apartment complex by reinvesting the sale proceeds in a new property; however, this was not done. Husband acknowledged that he knew that failing to reinvest the proceeds would result in a huge tax liability, but he thought that he could quickly establish his real estate practice in

⁹ The statute provides as follows:

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse; and
- (11) Such other factors as are necessary to consider the equities between the parties.

Tennessee to cover it. Thereafter, the proceeds were simply used for living expenses. Considering the evidence, we cannot conclude that the evidence preponderates against the trial court's finding that Husband was primarily responsible for this debt.

Apart from the tax debt, the remainder of the division of the marital property is substantially equal. Absent the tax debt, Husband is allocated approximately \$55,561.50 in assets. Upon review of the record, we cannot conclude that the trial court's overall division of the marital property and the marital debt is outside the range of acceptable alternatives; thus, we find no abuse of the trial court's discretion. *See Audiffred*, 2009 WL 4573417, at *1 (citing *Bronson*, 138 S.W.3d at 851).

Finally, Husband argues that the trial court erred in awarding alimony *in futuro* of one dollar per month to Wife. In particular, Husband emphasizes that Wife is forty years old, capable of working, and had "assisted" Husband in the maintenance of the Montana apartment complex. Husband also contends that the evidence preponderates against the trial courts findings as to the parties' earning capacities.

In determining amount and duration of spousal support, trial courts have broad discretion. *Brewer v. Brewer*, No. W2008-02041-COA-R3-CV, 2009 WL 2868746, at *7 (Tenn. Ct. App. Sept. 3, 2009) (citing *Mitts v. Mitts*, 39 S.W.3d 142, 146 (Tenn. Ct. App. 2000)). This court will not disturb an award of spousal support unless the trial court has abused its discretion. *See Goodman*, 2006 WL 47359, at *3 (citing *Herrera*, 944 S.W.2d at 385). In determining whether to award spousal support, and if so, in determining the nature and amount, the trial court is to consider the factors enumerated in Tennessee Code Annotated § 36-5-121(i).¹⁰ However, the most important

¹⁰ The statute provides as follows:

(i) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
- (3) The duration of the marriage;
- (4) The age and mental condition of each party;
- (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
- (7) The separate assets of each party, both real and personal, tangible and intangible;
- (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
- (9) The standard of living of the parties established during the marriage;
- (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a

(continued...)

factors are “the need of the economically disadvantaged spouse and the obligor spouse’s ability to pay.” *Montgomery v. Silberman*, No. M2009-00853-COA-R3-CV, 2009 WL 4113669, at *2 (Tenn. Ct. App. Nov. 24, 2009) (citing *Riggs v. Riggs*, 250 S.W.3d 453, 457 (Tenn. Ct. App. 2007)).

After carefully reviewing the record, we must conclude that the trial court did not err in its determination of the parties’ earning capacities or in awarding alimony *in futuro* to Wife. Wife is clearly economically disadvantaged and in need, while Husband possesses the skill and experience to earn substantial income. In the final order, the trial court expressly stated that it was making a nominal award of alimony in order to be able to revisit the issue later when Husband resumes earning money. In *Zabaski v. Zabaski*, No. M2001-02013-COA-R3-CV, 2002 WL 31769116 (Tenn. Ct. App. Dec. 11, 2002), the trial court granted the parties a divorce pursuant to Tennessee Code Annotated § 36-4-129¹¹ and awarded the wife alimony *in futuro* in the amount of one dollar per month. *Zabaski*, at *3. In doing so, the trial court noted “[t]he Court is not expecting to award alimony, but the Court does not want to preclude it.” *Id.* On appeal, the wife challenged the amount of the award, arguing that the evidence showed she had a need for a greater amount. *Id.* at *8. After reviewing the evidence, this Court dismissed the wife’s argument but noted “[w]e also believe that it was reasonable for the trial court to award Ms. Zabaski nominal alimony of \$1.00 per month, to maintain jurisdiction over the question of alimony.” *Id.* at *9.

¹⁰(...continued)

party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

T. C. A. § 36-5-121(i) (2005).

¹¹The statute provides the following:

(a) In all actions for divorce from the bonds of matrimony or legal separation the parties may stipulate as to grounds and/or defenses.

(b) The court may, upon stipulation to or proof of any ground of divorce pursuant to § 36-4-101, grant a divorce to the party who was less at fault or, if either or both parties are entitled to a divorce or if a divorce is to be granted on the grounds of irreconcilable differences, declare the parties to be divorced, rather than awarding a divorce to either party alone.

T. C. A. § 36-4-129 (2008 Supp.)

Likewise, in this case, we find that the trial court's award of nominal alimony does not constitute an abuse of discretion.¹² Therefore, we conclude that the trial court did not err in awarding spousal support to Wife.

CONCLUSION

The decision of the trial court is affirmed. The costs of this appeal are taxed to the appellant Tony Michael Hunsinger, and his surety, for which execution may issue if necessary.

HOLLY M. KIRBY, JUDGE

¹² In the final order, the trial court expressly stated that it was making a nominal award of alimony in order to be able to revisit the issue later when Husband resumes earning money. We note this Court's decision in *Cardella v. Cardella*, No.M2007-01522-COA-R3-CV, 2008 WL 4367306 (Tenn. Ct. App. Sept. 17, 2008). In *Cardella*, the wife sought a divorce on grounds of adultery as well as damages for the infliction of a sexually transmitted disease. *Cardella*, 2008 WL 4367306, at *1. The trial court awarded the wife a divorce and \$288,000 in compensatory damages. *Id.* at *2. The trial court also awarded alimony *in futuro* in the amount of one dollar per month in case the husband was able to have the damages award discharged in bankruptcy. *Id.* at *7. On appeal, we concluded that the nominal alimony award constituted an abuse of discretion because the reason for the alimony award was not to provide needed support for the wife, but rather to protect the tort damage award in the event of the husband's bankruptcy. *Id.* at *9. We find that the reasoning in *Cardella* is not applicable here.